

GILLIAN E. GOSCH
Assistant Federal Defender
ANTHONY R. GALLAGHER
Federal Defender
Federal Defenders of Montana
2702 Montana Avenue, Suite 101
Billings, Montana 59101
Phone: (406) 259-2459
Fax: (406) 259-2569
gillian_gosch@fd.org
Attorneys for Defendant

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DIMARZIO SWADE SANCHEZ,

Defendant.

Case No. CR-16-82-BLG-SPW-01

**DEFENDANT'S
MOTION FOR A NEW TRIAL**

I. MOTION

Defendant Dimarzio Swade Sanchez (Mr. Sanchez) moves this Court under Federal Rules of Criminal Procedure 33 for a new trial given.

II. GROUNDS

The grounds for this motion include: (1) in part, Mr. Sanchez cannot know whether Dr. Hastings was under the influence when she testified on his behalf; and (2) more importantly, Mr. Sanchez, through no lack of diligence on his part, has recently become aware that a cell phone with text messages about the night of the incident exists. These text messages may be material to the issue of Mr. Sanchez's guilt, and thereby not merely impeachment evidence, which could result in an acquittal. *See United States v. Harrington*, 410 F.3d 598 (9th Cir. 2005).

The government, to date, has not provided any information about the cell phone other than the government is "working on it," which means Mr. Sanchez has not had an opportunity to review the text messages nor conduct further investigation depending on the cell phone contents. The government, however, is obligated to provide information that bears on the issues of guilt or punishment under *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny.

III. CONTACT WITH OPPOSING COUNSEL

Pursuant to Local Rule 7.1(c)(1), the United States has been contacted. Assistant U.S. Attorney Lori Harper Suek opposes this motion.

IV. CONCLUSION

WHEREFORE, Mr. Sanchez requests that this Court grant his motion for a new trial or, at a minimum, hold ruling on the issue in abeyance pending the government's disclosure of the cell phone contents.

Should this Court determine a hearing is required, the hearing should consume 30 minutes of time. The defense submits no witnesses are required but the government may disagree. Therefore the time required for a hearing on this motion has not yet been determined with certainty. A brief in support of this motion has been separately filed at the same time as this motion.

RESPECTFULLY SUBMITTED this 23rd day of February, 2018.

/s/ Gillian Gosch

GILLIAN E. GOSCH

Assistant Federal Defender

CERTIFICATE OF SERVICE – L.R. 5.2(b)

I hereby certify that on February 23, 2018, a copy of the foregoing document was served on the following persons by the following means:

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|--|----------------------------|----|-------------------------------------|
| 1. | CLERK, U.S. DISTRICT COURT | 3. | DIMARZIO SWADE SANCHEZ
Defendant |
| 2. | | | |
| LORI HARPER SUEK
JOHN D. SULLIVAN
Assistant United States Attorney
United States Attorney's Office
2601 Second Ave. North
Suite 3200
Billings, MT 59101
Counsel for the United States | | | |

/s/ Gillian Gosch
Federal Defenders of Montana